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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/646,603 | 08/22/2003 | Rodger Graham | 03-12265 | 9804 |

25189 7590 01/12/2005

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EXAMINER

LUGO, CARLOS

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3676

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/646,603

Applicant(s)

GRAHAM ET AL.

Examiner

Carlos Lugo

Art Unit

3676

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 20-23

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☒ Other: See Continuation Sheet


DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Continuation of 10. Other:

Applicant's instant response after final apparently seeks reconsideration of the denial of entry of the proposed after final amendment filed on August 16, 2004. This "request for reconsideration" will be entered for purposes of appeal; the amendment filed on August 16, 2004 remains NOT ENTERED.

Applicant states that the proposed amendment of August 16, 2004 did not present additional claims without canceling a corresponding number of finally rejected claims. Review of the record reveals that claims 20-23 (four claims) were finally rejected and that these claims remain pending as a result of the August 16, 2004 propose amendment and new claims 38-41 were added. Accordingly, four pending claims plus four newly proposed claims yields eight claims total. Eight claims after the August 16, 2004 amendment is more than the four claims finally rejected. Thus, it is quite evident that the examiner's statement relating to the increase in number of claims is correct. Next, Applicant states that the application is in condition for immediate allowance. However, it is noted that this statement is conclusory and unsubstantiated and therefore not persuasive. In particular, it should be noted that 37 CFR 1.111(b) requires applicant to specifically and distinctly point out the reasons believed to render the claims, including newly presented claims, patentable over the prior art. Finally, applicant is reminded that prosecution was closed by the final rejection of May 26, 2004 and that entry of any amendment filed after final is not a matter of right. Applicant has failed to show that the August 16, 2004 amendment complied with Office policy and procedure for amendments submitted after final rejection and that it is denial of entry was improper..
